

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA, <i>ex rel.</i> MICHAEL CHERWENKA, Relator-Relator, v. CUMMINS INC., <i>et al.</i>, Defendants.	Civil Action No. 14-cv-00187-PAM-BRT CUMMINS INC.’S MOTION FOR JUDGMENT ON THE PLEADINGS
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CUMMINS INC.’S MOTION FOR JUDGMENT ON THE PLEADINGS

Judgment should be entered in defendant Cummins Inc.’s (“Cummins”) favor, pursuant to Fed. R. Civ. P. 12(c), on Michael Cherwenka’s (“Relator”) claims against it, alleging that Cummins violated the False Claims Act, 31 U.S.C.A. § 3729 *et seq.* (“FCA”), because those claims are virtually devoid of operative facts and thus fail to state cognizable claims.

Relator does not identify the Cummins representative(s) allegedly involved in the FCA violations, the dates of Cummins’ alleged conduct, any specific false claims or false statements Cummins allegedly made to the federal government, the alleged benefits Cummins received or any of the other purported particulars of Relator’s FCA claims against Cummins, as is required by Fed. R. Civ. P. 9(b).

Similarly, Relator does not allege facts making it probable that Cummins acted with the specific intent required to violate the FCA. Relator’s generalized conclusions, speculation and parroting of the elements of an FCA claim are not sufficient under any pleading standard.

Additionally, Relator's own allegations make it clear he is not an original source for the conclusory allegations he advances in his complaint, as defendant Wells has detailed in its Motion to Dismiss, and in which Cummins joins.

Finally, Relator alleges that the scheme about which he complains began in 2005 and was revealed to the federal government in 2006. Relator did not bring suit until 2014. Relator's claims are also barred by the FCA's statute of limitations, 31 U.S.C.A. § 3731.

For each of the above reasons, the Court should enter judgment in Cummins' favor on all claims against it alleged in Relator's Complaint. None of those claims state cognizable FCA claims.

Dated: December 15, 2017

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